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13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF ARIZONA**

15 C.M., on her own behalf and on behalf of her  
16 minor child, B.M.; L.G., on her own behalf  
17 and on behalf of her minor child, B.G.; M.R.,  
18 on her own behalf and on behalf of her minor  
19 child, J.R.; O.A., on her own behalf and on  
20 behalf of her minor child, L.A.; and V.C., on  
21 her own behalf and on behalf of her minor  
22 child, G.A.,

23 No. 2:19-cv-05217-SRB

24 **UNOPPOSED MOTION FOR**  
25 **COURT APPROVAL OF**  
26 **SETTLEMENTS OF MINORS'**  
27 **CLAIMS**

28 Plaintiffs,

v.

United States of America,

Defendant.

Plaintiffs C.M., on her own behalf and on behalf of her minor child, B.M.; L.G., on her own behalf and on behalf of her minor child, B.G.; O.A., on her own behalf and on behalf of her minor child, L.A.; and V.C., on her own behalf and on behalf of her minor child, G.A. (collectively, “Plaintiffs”)<sup>1</sup> hereby request that the Court approve the settlements of the minor Plaintiffs’ claims against the United States of America (“Defendant”). Defendant does not oppose the relief Plaintiffs seek herein.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

8 Plaintiffs brought this Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et. seq.*  
9 (“FTCA”), case against Defendant for its forced separation of parents and children in its  
10 custody. Plaintiffs C.M. and B.M. allege that they were forcibly and unlawfully separated  
11 by Defendant for over ten weeks; Plaintiffs L.G. and B.G. allege being forcibly and  
12 unlawfully separated for over nine weeks; Plaintiffs O.A. and L.A. allege being forcibly  
13 and unlawfully separated for over seventeen weeks; Plaintiffs V.C. and G.A. allege being  
14 forcibly and unlawfully separated for approximately ten weeks. All Plaintiff families  
15 allege that these separations, and the alleged mistreatment in government custody, caused  
16 them serious injury.

17 Plaintiffs sought damages for these harms, bringing claims under the FTCA for  
18 intentional infliction of emotional distress and negligence. *See* ECF No. 1. Plaintiffs'  
19 allegations are described in detail in their Complaint. *Id.*

## 20 | I. The Settlements, Attorneys' Fees, and Costs

21 Plaintiffs filed their initial Complaint in this action in the U.S. District Court for  
22 the District of Arizona on September 19, 2019. ECF No. 1. Plaintiffs moved this Court  
23 to proceed under pseudonym, which the Court granted. ECF Nos. 6, 7. On March 30,  
24 2020, the Court denied Defendant’s Motion to Dismiss for Lack of Subject Matter  
25 Jurisdiction, ECF No. 31, and the parties proceeded to engage in discovery. Discovery  
26 in this matter was extensive, involving the production of thousands of documents,

<sup>27</sup> Plaintiff J.R. turned 18 since the filing of this case and is no longer a minor. As a result,  
28 Plaintiffs M.R. and J.R. do not require court approval to finalize J.R.'s settlement.

1 responses to several sets of interrogatories, over 30 depositions, and evaluations of  
 2 Plaintiff mothers. On October 24, 2023, the Court denied Defendant's Motion for  
 3 Summary Judgment and granted in part and denied in part Plaintiffs' Motion for Partial  
 4 Summary Judgment. ECF No. 434. Trial was then scheduled to commence on April 23,  
 5 2024. ECF No. 439.

6 On April 10, 2024, the parties filed with the Court a joint notice announcing they  
 7 had reached conditional settlement for all C.M. Plaintiffs. ECF No. 465. Pursuant to the  
 8 proposed Settlement Agreements, Defendant will pay Plaintiffs C.M. and B.M. a total of  
 9 \$379,000; Plaintiffs L.G. and B.G. a total of \$216,000; Plaintiffs O.A. and L.A. a total of  
 10 \$379,000; and Plaintiffs V.C. and G.A. a total of \$379,000 (hereinafter "Settlement  
 11 Amounts") in settlement of all claims, pending Court approval and approval by the  
 12 Attorney General's designee. *See* Exs. A—D (Stipulations for Compromise Settlement).<sup>2</sup>

13 Plaintiffs have agreed to the terms, conditions, and requirements of the  
 14 Stipulations. The Settlements are now contingent upon: (1) Plaintiffs obtaining this  
 15 Court's approval for the minor Plaintiffs' portion of the Settlements; (2) Defendant's  
 16 approval of the Settlements by the Attorney General's designee after the Court approves  
 17 the minor Plaintiffs' Settlements; and (3) Plaintiffs obtaining an order from the this Court  
 18 dismissing this action in its entirety with prejudice, with each side bearing its own costs,  
 19 expenses, and fees, and with the Court not retaining jurisdiction over this action, these  
 20 Settlements, or the United States. *See, e.g.*, Ex. A at ¶ 5

21 Plaintiffs request that the Court approve the settlements on behalf of the minor  
 22 Plaintiffs, and that the Court approve that the Settlement Amounts for each family be  
 23 apportioned equally between Plaintiff parent and child. Accordingly, Plaintiffs request  
 24 the amounts be apportioned as follows: (a) Plaintiff C.M. shall receive \$189,500 in  
 25 settlement of her claims against Defendant, Plaintiff B.M., a minor, shall receive \$189,500

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26 <sup>2</sup> The redactions in Exhibits A—D are instances where the adult Plaintiffs' full names were  
 27 used in the agreement rather than their initials or the pseudonyms they were authorized  
 28 to proceed under in this case.

1 in settlement of his claims against Defendant; (b) Plaintiff L.G. shall receive \$108,000 in  
 2 settlement of her claims against Defendant, Plaintiff B.G., a minor, shall receive \$108,000  
 3 in settlement of her claims against Defendant; (c) Plaintiff O.A. shall receive \$189,500 in  
 4 settlement of her claims against Defendant, Plaintiff L.A., a minor, shall receive \$189,500  
 5 in settlement of her claims against Defendant; and (d) Plaintiff V.C. shall receive \$189,500  
 6 in settlement of her claims against Defendant, Plaintiff G.A., a minor, shall receive  
 7 \$189,500 in settlement of his claims against Defendant.

8       Under the FTCA, attorneys can collect up to twenty-five percent (25%) of the  
 9 Settlement Amounts. 28 U.S.C. § 2678. Here, Plaintiffs' counsel from Osborn Maledon,  
 10 P.A.; Arnold & Porter Kate Scholer LLP; Kairys, Rudovsky, Messing, Feinberg & Lin  
 11 LLP; National Immigrant Justice Center, and American Immigration Council represent  
 12 Plaintiffs *pro bono* and will not take payment from the Settlement Amounts. Plaintiffs'  
 13 counsel from National Immigration Litigation Alliance will be taking as payment two  
 14 percent (2%) of the Settlement Amounts of Plaintiffs C.M. and B.M., M.R. and J.R., O.A.  
 15 and L.A., and V.C. and G.A. (\$3,790 per Plaintiff). Plaintiffs' counsel will not be  
 16 collecting any payment from Plaintiffs L.G. and B.G.

17       The minor Plaintiffs' portions of the Settlements shall be placed in pooled minors'  
 18 trusts administered by Legacy Enhancement Trust. Distribution of funds to the minor  
 19 Plaintiffs from their respective pooled minor's trust will be overseen by a fiduciary trustee  
 20 at Legacy Enhancement Trust. At the time the trust is established, each participant makes  
 21 an election with respect to whether the trust terminates when the minor Plaintiff turns 18,  
 22 21, or 25 years old. Permissible distributions until the minor Plaintiffs turn 18 years old  
 23 include, but are not limited to, expenses related to education, health care, and technology.  
 24 After a minor Plaintiff turns 18 years old, they will be able to obtain distributions of  
 25 remaining funds for a wider range of expenses, as approved by the trustee, unless the  
 26 election to terminate the trust at age 18 was selected. Any funds remaining when a minor  
 27 Plaintiff turns 21 or 25 years old (or 18 years old if the election to terminate at age 18 was  
 28 selected) will be released to the minor Plaintiff *in toto*. Information about the pooled

1 minors' trusts and the agreements for funding the minors' trusts are contained in Exhibit  
 2 E, which is a form agreement for the trust.

3 **II. Reasonableness of the Settlements**

4 The district court in "which a minor's claims are being litigated has a duty to  
 5 protect the minor's interests." *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir.  
 6 1983). "In the context of proposed settlements in suits involving minor plaintiffs, this  
 7 special duty requires a district court to 'conduct its own inquiry to determine whether the  
 8 settlement serves the best interests of the minor.'" *Robidoux v. Rosengren*, 638 F.3d  
 9 1177, 1181 (9th Cir. 2011) (quoting *Dacaney v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir.  
 10 1978)); *accord. Martinez v. City of Avondale*, No. CV-12-1837-PHX-LOA, 2014 WL  
 11 880492, at \*2 (D. Ariz. Mar. 6, 2014) (approving compromise settlement of minor's  
 12 claim). To make that determination, a district court should consider "whether the net  
 13 amount distributed to each minor plaintiff in the settlement is fair and reasonable, in light  
 14 of the facts of the case, the minor's specific claim, and recovery in similar cases."  
 15 *Robidoux*, 638 F.3d at 1181–82. If those factors are established, then the settlement  
 16 should be approved. *Id.* at 1182.

17 The proposed Settlements provide for a fair and reasonable allocation of the  
 18 settlement proceeds to the minor Plaintiffs based on their circumstances and the status of  
 19 the case.<sup>3</sup> Here, minor Plaintiffs B.M., B.G., L.A., and G.A. would receive an equal share  
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21 <sup>3</sup> This Court and several other courts in this district have recently approved minor  
 22 settlements in similar FTCA lawsuits stemming from forced family separations. See  
 23 Order Approving Settlement of Minor's Claims, *A.P.F. v. United States*, CV-20-00065-  
 24 PHX-SRB (D. Ariz. May 23, 2024), ECF 482 (approving settlements of \$189,500 and  
 25 \$90,000 for the minor plaintiffs); Order Approving Settlement of Minor's Claim, *E.S.M.*  
 26 *v. United States*, Case No. CV-21-00029-TUC-JAS (D. Ariz. Mar. 28, 2024), ECF No.  
 27 100 (approving settlement of \$157,000 for the minor plaintiff); Order Approving  
 28 Settlement of Minors' Claims, *A.I.I.L. v. United States*, Case No. CV-19-0481-TUC-JCH  
 (D. Ariz. Mar. 12, 2024), ECF No. 134 (approving settlements of \$97,500, \$137,500, and  
 \$131,666 for the minor plaintiffs); Order Approving Settlement of Minors' Claims, *N.R.*  
*v. United States*, Case No. 4:23-CV-00201-JR (D. Ariz. Feb. 26, 2024), ECF No. 36  
 (approving settlements of \$80,000, \$140,000, and \$90,000 for the minor plaintiffs); Order  
 Approving Settlement of Minor's Claims, *Fuentes-Ortega v. United States*, Case No. CV-  
 22-00449-PHX-DGC (D. Ariz. Feb. 2, 2024), ECF No. 84 (approving settlement of  
 \$50,000 for the minor plaintiff); Order Approving Settlement of Minor's Claims, *F.R. v.*

1 of the settlements for each respective Plaintiff family, which provides the recovery of a  
 2 sum certain and avoids the delay and risks of further litigation.

3 Since their interests are aligned, C.M., as B.M.’s mother; L.G. as B.G.’s mother;  
 4 O.A., as L.A.’s mother; and V.C., as G.A.’s mother, may approve their respective  
 5 settlements and sign on their children’s behalf. “Generally, when a minor is represented  
 6 by a parent who is a party to the lawsuit and who has the same interests as the child there  
 7 is no inherent conflict of interest.” *Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001)  
 8 (citing *Croce v. Bromley Corp.*, 623 F.2d 1084, 1093 (5th Cir. 1980)); *Gonzalez v. Reno*,  
 9 86 F. Supp. 2d 1167, 1185 (S.D. Fla. 2000) (“[W]hen a parent brings an action on behalf  
 10 of a child, and it is evident that the interests of each are the same, no need exists for  
 11 someone other than the parent to represent the child’s interests under [Federal Rule of  
 12 Civil Procedure] 17(c.”), *aff’d* 212 F.3d 1338 (11th Cir. 2000); *see also Tex. Ins. Co. v.*  
 13 *Athena Logistic Sols. LLC*, No. CV-23-00038-TUC-RM, 2024 WL 309942, at \*2–3 (D.  
 14 Ariz. Jan. 26, 2024) (noting that evidence of a parent putting his or her interest over that  
 15 of the minor child is necessary to show a conflict of interest); *Wright v. S. Ariz. Child.’s*  
 16 *Advoc. Ctr.*, Case No. 21-CV-00257, 2023 WL 6517452, at \*1 (D. Ariz. Oct. 5, 2023)  
 17 (approving minor’s settlement and finding that the court “need not appoint a guardian ad  
 18 litem [because the] minor [was] adequately represented by a parent” who had “retained  
 19 counsel [ ] to represent [the minor’s] interests in [the] action”).

20 Here, the adult Plaintiffs have represented the minor Plaintiffs’ interests fairly  
 21 throughout the litigation and during the settlement process. The requested Settlement  
 22 allocations further show that C.M., L.G., O.A., and V.C. have not placed their interests  
 23 above those of the minor Plaintiffs; indeed, the Settlement Amounts are intended to be  
 24 divided evenly between parent and child. In addition, the Plaintiff parents’ interests are  
 25 aligned with those of the minor Plaintiffs’ because all Plaintiffs seek damages for their  
 26 alleged unlawful forced separations in 2018 by Defendant. *See* ECF No. 1. Minor

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27 *United States*, Case No. CV-21-00339-PHX-DLR (D. Ariz. Nov. 2, 2023), ECF No. 94  
 28 (approving settlement of \$65,000 for the minor plaintiff).

1 Plaintiffs B.M., B.G., L.A., and G.A. are all under the age of 18. Adult Plaintiffs C.M.,  
 2 L.G., O.A., and V.C. provide parental support for their children, and they will continue  
 3 to care for minor Plaintiffs B.M., B.G., L.A., and G.A., respectively, until each turns 18.

4 Given the absence of any conflict of interest between the Plaintiffs, this Court has  
 5 the power to approve the Settlements and grant Plaintiffs C.M., L.G., O.A., and V.C. the  
 6 authority to consummate the Settlements on behalf of minor Plaintiffs B.M., B.G., L.A.,  
 7 and G.A., respectively. *See Tex. Ins. Co.*, 2024 WL 309942, at \*2–3.

8 **III. Requested Action by the Court**

9 Plaintiffs ask the Court to enter the proposed Order submitted with this Motion,  
 10 which would:

- 11 1. Approve the Settlements attached as Exhibits A through D to this Motion  
 12 on behalf of Minor Plaintiffs B.M., B.G., L.A., and G.A. respectively;
- 13 2. Approve an allocation of the Settlement Amounts as follows:
  - 14 a. Plaintiff C.M. and minor Plaintiff B.M. each receiving \$189,500;
  - 15 b. Plaintiff L.G. and minor Plaintiff B.G. each receiving \$108,000;
  - 16 c. Plaintiff O.A. and minor Plaintiff L.A. each receiving \$189,500;
  - 17 d. Plaintiff V.C. and minor Plaintiff G.A. each receiving \$189,500.
- 18 3. Approve the placement of B.M.’s, B.G.’s, L.A.’s, and G.A.’s Settlement  
 19 Shares of \$189,500, \$108,000, \$189,500, and \$189,500, respectively, into  
 20 individual pooled minors’ trusts administered by Legacy Enhancement  
 21 Trust on behalf of B.M., B.G., L.A., and G.A. Plaintiffs’ counsel shall  
 22 coordinate with C.M., L.G., O.A., V.C., and Legacy Enhancement Trust for  
 23 the execution of all necessary paperwork and the funding of the pooled  
 24 minors’ trusts of B.M., B.G., L.A., and G.A.

25 **IV. Hearing**

26 The Court may approve these Settlements without a hearing. However, should the  
 27 Court have any questions about the Settlements, Plaintiffs respectfully request that it  
 28 conduct a hearing via telephone or video-conference to minimize costs.

1 Respectfully submitted this 1st day of July, 2024.

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